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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/707,583	12/22/2003	THOMAS D. WILLIAMS	33610	1582
23589	7590	11/16/2005		
HOVEY WILLIAMS LLP 2405 GRAND BLVD., SUITE 400 KANSAS CITY, MO 64108			EXAMINER WOLFE, DEBRA M	
			ART UNIT 3725	PAPER NUMBER

DATE MAILED: 11/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

JP

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/707,583	WILLIAMS, THOMAS D.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Debra Wolfe	3725	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 December 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 and 19-34 is/are rejected.
- 7) ☒ Claim(s) 18 and 35 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_



## DETAILED ACTION

### *Specification*

The abstract of the disclosure is objected to because it contains the following informalities:

1. Paragraph 28, line 1 of the disclosure states “the arcuate portion of the rod 30”, however reference numeral 30 is designated to be “the loop end section” (paragraph 27, line 3)

Correction is required. See MPEP § 608.01(b).

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

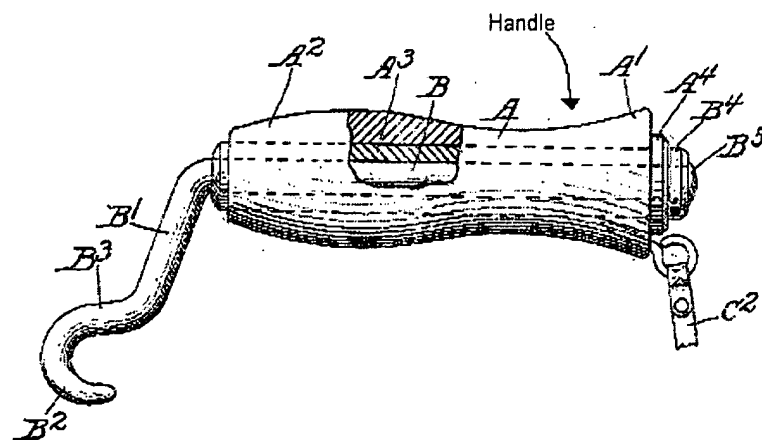
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1-5, 8, 10, 13, 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Bates (U.S. Patent # 1,365,649). Bates discloses a wire tying tool having an elongated rod (crank arm  $B^1$ ) with opposite spaced apart ends and an arcuate clip engaging portion (bight  $B^3$ ) for securing a clip device ( $C^1$ ) through a bending motion; and a wooden handle (See FIG below), that is angularly projecting from one end of the rod and is generally transverse and projecting generally perpendicularly thereby presenting an approximately 90° angle relative to the rod. Bates also discloses the handle having a rotatable handle cover (metallic sleeve  $A^3$ , and handle  $A$ ) that is supported by a center shaft (shank  $B$ ) having opposite spaced apart handle ends wherein one handle end is adjacent to the rod. The center shaft (shank  $B$ ) and rod (crank arm  $B^1$ ) of Bates



is integrally formed to cooperatively present a bent unitary bar (center dotted line within handle, See FIG 1).

2. Claims 19-22, 25, 27, 30, and 31 rejected under 35 U.S.C. 102(b) as being anticipated by Bates (U.S. Patent # 1,365,649). Bates discloses a wire tying tool having an elongated rod (See FIG below), that is angularly projecting from a handle, (See FIG below) with opposite spaced apart ends and an arcuate clip engaging portion (bight  $B^3$ ) for securing a clip device ( $C^1$ ) through a bending motion; and a wooden handle (See FIG below), that is projecting from one end of the rod and is generally transverse and projecting generally perpendicularly thereby presenting an approximately 90° angle relative to the rod. Bates also discloses the handle having a rotatable handle cover (metallic sleeve  $A^3$ , and handle  $A$ ), that is supported by and rotatable relative to the center shaft (shank  $B$ ), having opposite spaced apart handle ends wherein one handle end is adjacent to the rod. The center shaft (shank  $B$ ) and rod (See FIG below) of Bates is integrally formed to cooperatively present a bent unitary bar (center dotted line within handle, See FIG 1).





***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

1. Claims 1-17, 19-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hodge, Sr (U.S. Patent # 6,499,514) in view of Bates (U.S. Patent # 1,365,649), Eastman Kodak, The Federal Aviation Administration (FAA) and Official Notice. Hodge, Sr discloses a fencing tool having an elongated rod (See FIG 1 below) presenting opposite spaced apart ends and is configured to engage a clip (20) with the arcuate clip engaging portion (See FIG 1 below) between the ends for securement of a fencing wire (fence wire 50) through a bending motion; a handle (42) angularly projecting from one end of the rod and is generally transverse and projecting generally perpendicularly thereby presenting an approximately 90° angle relative to the rod. The handle of Hodge, Sr includes a center shaft (dotted lines within handle, See FIG 4) having opposite spaced apart handle ends wherein one handle end is adjacent to the rod, it is also



disclosed that the center shaft and rod are integrally formed to cooperatively present a bent unitary bar (See FIG 4). Hodge, Sr discloses the invention substantially as claimed except for wherein the handle includes a rotatable handle cover and an end cap. However, Bates discloses a wire tying tool with a handle (See FIG 2 below) having a rotatable wooden or fiber handle cover (metallic sleeve  $A^3$ , and handle  $A$ ) that is supported by a center shaft (shank  $B$ ) and an end cap (upset  $B^5$ ) removably attached to the handle end opposite from one of the handle ends (examiner interprets "removable" in the broadest sense) and is configured to cooperatively retain the handle cover (metallic sleeve  $A^3$ , and handle  $A$ ) on the center shaft (shank  $B$ ). Therefore it would have been obvious to one of ordinary skill in the art to utilize the crank-like rotatable sleeve handle and end cap (upset  $B^5$ ) of Bates with the fence clip tool as disclosed by Hodge, Sr since such a modification would allow for an improved form of a hand operated, hand controlled wire tying tool and prevent movement of the handle cover upon the center shaft.

Figure 5 of Hodge, Sr shows the rod length to be approximately equal to five inches and further shows the arcuate clip-engaging portion (See FIG 1 below) having an arc-length not less than about seventy-five percent of the rod length. Furthermore, a change in size to the rod length or arc-length of the arcuate clip engaging portion would have been obvious to one of ordinary skill in the art at the time the invention was made in order to better enable use of the tool by the user. Let it be noted that the specification does not disclose any criticality to the length of the rods (See paragraph 22 lines 8-11 and paragraph 23 lines 13-16) claimed and therefore the examiner reasserts the above position.

It is also noted that the use of cold rolled carbon steel for the bar would have been obvious to one of ordinary skill in the art at the time the invention was made in order to provide a strong bar that



can withstand wear over a period of time. Again there is no criticality to the use of cold rolled carbon steel as the material for the bar (See paragraph 22, lines 15-17) and therefore the examiner reasserts the above position.

With regards to claims 12 and 29, Hodge, Sr discloses the invention substantially as claimed except for wherein the handle is about three inches in length. However, Eastman Kodak and the FAA both disclose anthropometric measurements of the hand breadth at the 95<sup>th</sup> percentile. The FAA discloses the average male hand breadth to be 3.9 inches and the average female hand breadth to be 3.4 inches, both at the 95<sup>th</sup> percentiles. Eastman Kodak discloses an average hand breadth for males and females (50/50 males/females) to be 3.6 inches at the 95<sup>th</sup> percentile. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Hodge, Sr with a handle measuring three inches in length in order provide a handle that is ergonomically designed for the user.

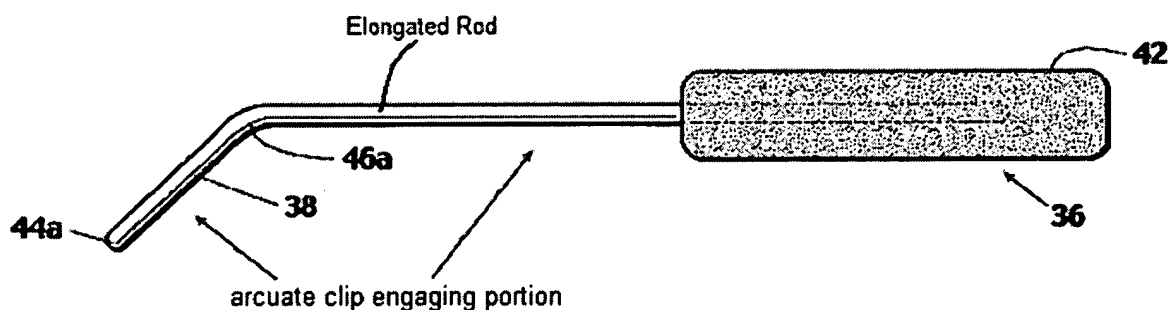


FIG. 1

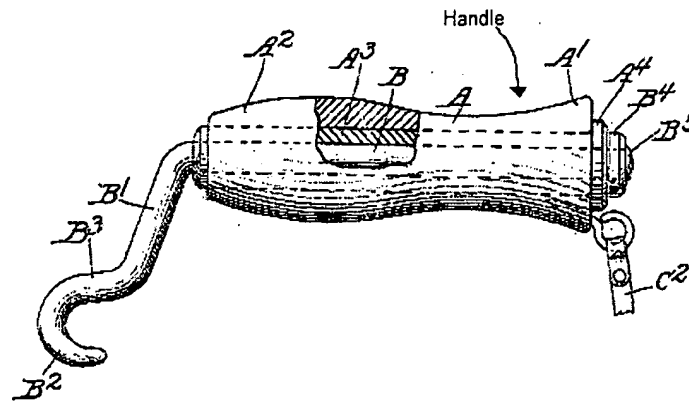


FIG. 2

With regards to claims 15 –17 and 32-34, Hodge, Sr discloses the method of securing the fence clip using the tool as claimed having the steps of:

1. Placing a fencing wire (50) adjacent the fencing post (48) at a desired position and orientation;
2. Placing a yieldably rigid clip (20), having oppositely spaced latching end sections (25, 32) whereby one end engages the wire and the other end forms a loop opening with the wire;
3. Inserting the rod into the loop opening; and
4. Exerting a bending force upon the handle to swing the rod about an arc of about 180° and thereby bend the wire clip to secure the fencing wire to the fence post.

(See FIGS 8-10E and col 3, line 62 – col 4, line 15)

It is noted that claim 15 part (d) uses the term “exhorting”, the examiner is interpreting this to be a misuse of the term and believes it is to state “exerting a bending force upon the handle...”





With regards to claims 16 it known to one of ordinary skill in the art to tension the fencing wire prior to securing it to the fence post in order to prevent future sagging.

***Allowable Subject Matter***

Claims 18 and 35 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Debra Wolfe whose telephone number is (571) 272-1904. The examiner can normally be reached Monday - Friday 6am - 3:30pm with alternating Fridays 6am - 2:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached at (571) 272-4419. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
DERRIS H. BANKS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700

Debra Wolfe  
Examiner  
Art Unit 3725



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